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DATE FILED: 12/6/2021

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TYREFE KELLY,

Plaintiff,

-against-

N.Y.C./D.O.C./V.C.B.C. WARDEN CARTER;  
N.Y.C./D.O.C./V.C.B.C. CAPTAIN GUERRA; 3-  
AA HOUSING UNIT CAPTAIN;  
N.Y.C./D.O.C./V.C.B.C. CAPTAIN JOHN DOE  
INTAKE SUPERVISING CAPTAIN;  
N.Y.C./D.O.C./V.C.B.C. CAPTAIN HORTON,

Defendants.

1:21-CV-8992 (ALC)

ORDER OF SERVICE

ANDREW L. CARTER, JR., United States District Judge:

Plaintiff, currently held in the Vernon C. Bain Center (VCBC), in Bronx, New York, brings this *pro se* action alleging that the defendants violated his federal constitutional rights. By order dated December 2, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).<sup>1</sup>

The Court requests that Defendants Carter, Horton, and Guerra waive service of summons. The Court directs the New York City Law Department to provide to Plaintiff and the Court the identity and badge number of Defendant "Captain John Doe."

## DISCUSSION

### A. Waiver of Service

The Court directs the Clerk of Court to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that (1) C.

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<sup>1</sup> Prisoners are not exempt from paying the full filing fee, even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

Carter, the VCBC Warden; (2) Captain Horton, a VCBC Facility Storehouse Captain; and (3) Captain Guerra, the VCBC Housing Unit 3-AA Shift Supervisor, waive service of summons.

**B. “Captain John Doe”**

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the New York City Department of Correction (DOC) to identify “Captain John Doe,” a VCBC Facility Shift Supervising Captain on duty in the VCBC on October 5, 2021. It is therefore ordered that the New York City Law Department, which represents the DOC, must ascertain the identity and badge number of “Captain John Doe,” whom Plaintiff seeks to sue here, and the address where that defendant may be served.<sup>2</sup> The New York City Law Department must provide this information to Plaintiff and the Court within 60 days of the date of this order.

Within 30 days of receiving this information, Plaintiff must file an amended complaint naming the newly identified individual as a defendant. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order asking that defendant to waive service.

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<sup>2</sup> If “Captain John Doe” is a current or former DOC employee or official, the New York City Law Department should note in the response to this order that an electronic request for a waiver of service can be made under the e-service agreement for cases involving DOC defendants, rather than by personal service at a DOC facility. If “Captain John Doe” is not a current or former DOC employee or official, but otherwise works or worked at a DOC facility, the New York City Law Department must provide a residential address where that individual may be served.

**CONCLUSION**

The Court directs the Clerk of Court to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that the following defendants waive service of summons: (1) C. Carter, the VCBC Warden; (2) Captain Horton, a VCBC Facility Storehouse Captain; and (3) Captain Guerra, a VCBC Housing Unit 3-AA Shift Supervisor.

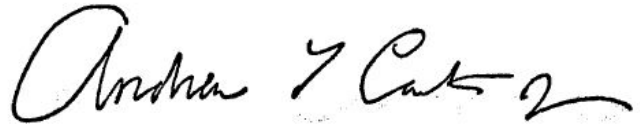
The Court also directs the Clerk of Court to mail a copy of this order and the complaint to New York City Law Department at 100 Church Street, New York, New York 10007.

An amended complaint form is attached to this order.

The Court further directs the Clerk of Court to mail a copy of this order to Plaintiff, together with an information package.

SO ORDERED.

Dated: December 6, 2021  
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

ANDREW L. CARTER, JR.  
United States District Judge